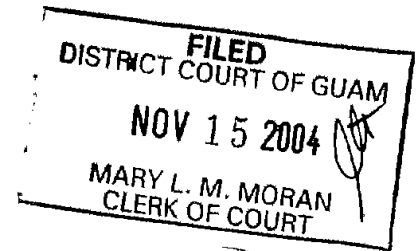


DAVID W. HOPKINS, ESQ.  
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825 South Marine Drive  
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Telephone No.: (671) 646-2001  
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Attorneys for Guam Election Commission  
and Gerald A. Taitano

IN THE DISTRICT COURT OF GUAM

JAY MERRILL, etc., et. al.,	)	CIVIL CASE NO. 04-00046
	)	
Plaintiff,	)	
	)	
v.	)	<b>GUAM ELECTION COMMISSION'S</b>
	)	<b>AND GERALD A. TAITANO'S</b>
THE GUAM ELECTION COMMISSION;	)	<b>MEMORANDUM OF POINTS AND</b>
GERALD A. TAITANO, in his individual	)	<b>AUTHORITIES IN SUPPORT OF</b>
capacity and in his capacity as the	)	<b>MOTION FOR PROTECTIVE ORDER</b>
Executive Director of THE GUAM	)	
ELECTION COMMISSION, I MINA'	)	
BENTE SIETE NA LIHESLATURAN	)	
GUAHAN (The 27 <sup>th</sup> Guam Legislature);	)	
FELIX P. CAMACHO, in his official	)	
capacity as the GOVERNOR OF GUAM,	)	
	)	
Defendants.	)	

**JURISDICTION**

This Court has authority to hear this motion pursuant to FRCP 26(c)(1) and (2).

**FACTS**

On October 26, 2004, the Office of the Attorney General filed herein a Notice of

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ORIGINAL

Removal. The Notice of Removal stated that the Office of the Attorney General was counsel "For All Defendants." Notice, at 3.

On October 28, 2004, this Honorable Court received herein an Amended Stipulation and Order for Preliminary Injunction ("Amended Stipulation"). The Amended Stipulation stated, in pertinent part, that the Office of the Attorney General was "Attorneys for Defendants the Guam Election Commission, Gerald A. Taitano, in his capacity as the Executive Director of the Guam Election Commission, ...." Amended Stipulation, at 3.

On October 29, 2004, the Law Offices of Cesar C. Cabot, P.C., filed herein its Entry of Appearance "as counsel for the Guam Election Commission and Gerald A. Taitano in his official capacity and individually."

On November 10, 2004, Plaintiff's Counsel of Record filed herein and served upon the Law Offices of Cesar C. Cabot, P.C., a Notice of Deposition for the deposition of Defendant Gerald A. Taitano ("Mr. Taitano") on Thursday, November 18, 2004, at 1:00 p.m.. A true and correct copy of the Notice of Deposition is attached as Exhibit "A" and incorporated by reference.

#### ANALYSIS

#### **APROTECTIVEORDERSHOULDBEISSUEDTOSTAY THE DEPOSITION OF MR TAITANO PENDING DETERMINATION OF PROPER LEGAL REPRESENTATION FOR THE GUAM ELECTION COMMISSION AND MR. TAITANO.**

FRCP 26(c) provides in pertinent part:

\* \* \*

(c) PROTECTIVE ORDERS. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following.

- (1) that the disclosure or discovery not be had;
- (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of time or place.

\* \* \*

FRCP 26(c) (emphasis added).

Mr. Taitano, through the Law Offices of Cesar C. Cabot, P.C., has in good faith conferred with Plaintiff's Counsel of Record in an effort to resolve the dispute without action, but no resolution was possible. See, Declaration of David W. Hopkins.

FRCP 26(c) authorizes this Honorable Court to issue the requested protective order after showing that good cause exists for the protection of the Guam Election Commission and Mr. Taitano. Rule 26(c) authorizes this Honorable Court to make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

Clearly, if the requested protective order is denied, it will be oppressive and unduly burdensome for the Guam Election Commission and Mr. Taitano to attend a deposition herein with

legal representation by both the Office of the Attorney General and the Law Offices of Cesar C. Cabot, P.C.. The GEC and Mr. Taitano very respectfully submit that such an arrangement would be oppressive and unduly burdensome because it would require the GEC and Mr. Taitano to prepare for and to attend Mr. Taitano's deposition with representation imposed upon them by the Office of the Attorney General. The GEC has retained the Law Offices of Cesar C. Cabot, P.C., pursuant to 3 GCA § 2103(b), which provides that the "designated counsel shall represent the [GEC] in litigation in which the [GEC] is interested or involved." 3 GCA § 2103(b). Accordingly, the GEC has designated the Law Offices of Cesar C. Cabot, P.C., pursuant to 3 GCA § 2103(b) to represent the GEC in all aspects of this litigation, including depositions.

Under the circumstances presented and pursuant to FRCP 26(c)(2), this Honorable Court should order that the deposition may be had only on specified terms and conditions, including a designation of time. Specifically, this Honorable Court should stay the deposition of Mr Taitano pending determination of proper legal representation for the Guam Election Commission and Mr. Taitano.

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CONCLUSION

For the foregoing reasons, this Honorable Court should issue a protective order to stay the deposition of Mr Taitano pending determination of proper legal representation for the Guam Election Commission and Mr. Taitano.

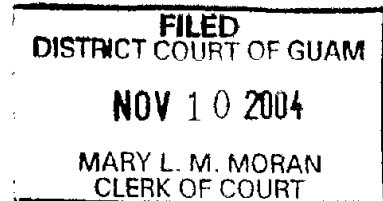
Respectfully submitted on the 15<sup>th</sup> day of November, 2004.

LAW OFFICES OF CESAR C. CABOT, P.C.  
Attorneys for the Guam Election Commission  
and Gerald A. Taitano.

By:   
DAVID W. HOPKINS

DWH:lq  
P043506

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Tamuning, Guam 96913  
Telephone: (671) 646-1222  
Facsimile: (671) 646-1223



IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

JAY MERRILL, on his own behalf and on  
behalf of all other similarly situated voters  
desirous of casting a vote in favor of  
Proposal A at a fair and legal election,

Plaintiffs,

vs.

THE GUAM ELECTION COMMISSION;  
GERALD A. TAITANO, in his capacity as  
the Executive Director of THE GUAM  
ELECTION COMMISSION, I MINA'  
BENTE SIETE NA LIHESLATURAN  
GUAHAN (The 27<sup>th</sup> Guam Legislature);  
FELIX P. CAMACHO, in his official  
capacity as the GOVERNOR OF GUAM.

Defendants.

CIVIL CASE NO. CIV04-00046

RECEIVED  
Law Office of  
Cesar C. Cabot, P. C.  
Date: 11/10/04  
Time: 10:00 A  
Initials: EC

NOTICE OF DEPOSITION

Deponent: Gerald A. Taitano  
Date: Thursday, November 18, 2004  
Time: 1:00 p.m.

To: Defendant The Guam Election Commission; Gerald A. Taitano  
And Their Attorney of Record, Cesar C. Cabot, Esq.

Defendant I Mina' Bente Siete Na Liheslaturan Guahan  
(The 27<sup>th</sup> Guam Legislature)  
And Its Attorneys of Record, Therese M. Terlaje, Esq.

Defendant Felix P. Camacho, Governor of Guam  
And His Attorneys of Record, Shannon J. Taitano, Esq.  
And the Law Offices of Calvo & Clark

Defendants, through the Office of the Attorney General

PLEASE TAKE NOTICE that on Thursday, the 18<sup>th</sup> day of November 2004 at the hour of  
1:00 pm, at the law offices of Dooley Roberts & Fowler LLP, Suite 201 Orlean Pacific Plaza, 865

South Marine Drive, Tamuning, Guam 96913, Plaintiff Jay Merrill, through his attorneys of record, Dooley Roberts & Fowler LLP, by Thomas L. Roberts, Esq., will take the deposition of Defendant **Gerald A. Taitano**, upon oral examination pursuant to Rule 30 of the Federal Rules of Civil Procedure, before a notary public or an officer authorized by law to administer oaths.

The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

Dated this 10<sup>th</sup> day of November 2004.

DOOLEY ROBERTS & FOWLER LLP

By: 

**THOMAS L. ROBERTS**

Attorneys for Plaintiff Jay Merrill

**CERTIFICATE OF SERVICE**

I, **THOMAS L. ROBERTS**, hereby declare that on November 10<sup>th</sup>, 2004, I caused a copy of Plaintiff Jay Merrill's Notice of Deposition of Defendant Gerald A. Taitano to be served upon the following:

Cesar C. Cabot, Esq.  
2<sup>nd</sup> Floor, BankPacific Building  
825 South Marine Corps Drive  
Tamuning, Guam 96913

Therese M. Terlaje, Esq.  
Post Office Box 864  
Hagatna, Guam 96932

Shannon J. Taitano, Esq.  
Office of the Governor  
Post Office Box 2674  
Hagatna, Guam 96932

Calvo & Clark  
655 South Marine Corps Drive  
Tamuning, Guam 96913

Office of the Attorney General  
Suite 2-200E, Guam Judicial Center  
120 West O'Brien Drive  
Hagatna, Guam 96910

Dated this 10<sup>th</sup> day of November 2004.



**THOMAS L. ROBERTS**